

Opinion No. 21/2008 (China)

Communication addressed to the Government on 17 July 2007

Concerning Pastor Gong Shengliang

The State has signed but not ratified the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information.
3. (Same text as paragraph 1 of Opinion No. 17/2008.)
4. The case summarized below was reported to the Working Group on Arbitrary Detention as follows: Pastor Gong Shengliang (Gong Dali) is a Christian Pastor from Hubei province who founded the South China Church in 1988. The South China Church exists independently of the only State-sanctioned Protestant Church in China, the Three Self Patriotic Movement. The Church does not register with the Religious Affairs Bureau. Under Pastor Gong's leadership, the Church rapidly grew into one of China's largest Christian Protestant Churches. Over 2,000 members of the Church were imprisoned between 1986 and 2001. In 2000, the Central General Office of the Communist Party and General Office of the State Council designated Pastor Gong's Church as a "cult organization" and intensified its efforts to dismantle the Church. A Cult Notice stated that Pastor Gong and the Church threatened society and instructed security departments throughout the country "to apprehend Gong and key members [of the Church] without delay".
5. On 8 August 2001, Hubei Police arrested Pastor Gong at the home of a Church member. Police also arrested 16 other members of the South China Church between May and October 2001 who were later indicted and tried along with Pastor Gong. After their arrests, police did not allow arrested Church members to contact their family members and did not notify family members of the locations where Church members were detained. The police did not allow Church members to contact lawyers.
6. Twenty-one (21) members of the South China Church have detailed in sworn statements submitted to the Working Group that Hubei Police tortured them into making false statements about Pastor Gong either before or during Pastor Gong's trials. They identified the following government facilities as locations where police tortured them: Zhongxiang Public Security Bureau, Jingmen Detention Centre, Zhongxiang Police Training Centre, Jingmen Police Training School, and Shayang Detention Centre. They also identified by name officers of the Zhongxiang Religious Affairs Bureau, Zhongxiang Public Security Bureau, Shayang Public Security Bureau, and Chengzhong Police Station as responsible for supervising and carrying out the torture. All 10 women whom the Government accused Pastor Gong of raping (their names are on record with the Working Group) recanted their statements and said that they were tortured into making the accusations.
7. According to the source, Pastor Gong himself was tortured and forced to sign a false confession of guilt. After his arrest on 8 August 2001, Pastor Gong's family was not notified of his whereabouts until 10 December 2001. During these four months of incommunicado detention, police repeatedly interrogated Pastor Gong under situations of mental, psychological and physical duress. Under the pressure of threats, Pastor Gong signed a statement admitting to the rape and assault charges. On 5 December 2001, after nearly four months of incommunicado detention, the Procuratorate charged Pastor Gong with an indictment including charges of organizing a cult, rape, and intentional assault. It

was reported that under article 300 of the Criminal Law of the People's Republic of China (the "Anti-Cult Law"), evidence that a leader has had "illicit sexual relations with women" may be used to substantiate the charge that the organization is a cult.

8. On 19 December 2001, the Intermediate Court began secret proceedings against Pastor Gong and the other 16 defendants. Family members of the defendants were not permitted to enter the court. Pastor Gong was in a visibly weakened state on the first day of the trial. On the second day of the court hearing, Pastor Gong was unable to stand. He spoke to the judge and then fainted before the judge could respond. The Intermediate Court permitted the alleged victims of assault to give testimony without identifying themselves. The alleged victims were unable to identify any of the defendants as their attackers. The Intermediate Court did not permit Pastor Gong's lawyers to cross-examine any of the alleged victims. At least six of the defendants stated in court that they had been tortured during interrogation and under this duress made false accusations against Pastor Gong which they wanted to retract. However, the Intermediate Court denied all requests to recant the false accusations. All defendants submitted a written statement to the Intermediate Court explaining that their confessions were false and had been extracted through torture. Pastor Gong himself submitted a written statement stating that he was coerced into making a false confession of guilt. The Intermediate Court did not offer any response to the document. Neither did the Intermediate Court investigate allegations of torture.

9. The indictment named more than 20 criminal charges against Pastor Gong and the other 16 defendants and listed 13 separate villages in 10 townships and eight cities as locations of the alleged activities. The charges covered activities spanning more than six years, involved 30 alleged victims and 31 alleged witnesses. Yet after only three days of proceedings, the Intermediate Court found Pastor Gong guilty of intentional assault, rape, "organizing and utilizing a cult organization to undermine law enforcement", and intentionally destroying property. The Intermediate Court sentenced Pastor Gong to death. Prison guards then forced Pastor Gong and the other defendants to sign the record of the trial without allowing them to read it.

10. Upon appeal by the defendants, the Court of Appeals conceded that "the facts affirmed by the Intermediate Court are not clear and the evidence supporting the judgment is not sufficient". It ordered a retrial. On 9 October 2002, the second trial of Pastor Gong and the other 16 defendants began. Pastor Gong's lawyers were denied access to the record of the first trial. The day before the trial began, on 8 October 2002, the Court of Appeals and the Intermediate Court required the attendance of Pastor Gong's attorneys at a private lunch meeting. At the meeting, officers of the Intermediate Court told Pastor Gong's attorneys that the case was politically significant and that they must keep State secrets and cooperate with the Intermediate Court in order to bring the trial to a swift conclusion. The second trial again took place in secret. Rather than hearing live testimony about the charges of rape and assault, the Intermediate Court directed the Procuratorate to present only summaries of witness and victim statements. The Intermediate Court rejected the request by the defence attorneys for a complete presentation of evidence. With regard to the rape charges, the Procuratorate disclosed only the last names of the four alleged victims, none of whom testified at the trial. Moreover, the statements from the victims were never shown to Pastor Gong or his attorneys. Pastor Gong's lawyers thus could not determine the identities of the alleged victims much less examine the witnesses against him or defend him against the charges.

11. The judgment of the Intermediate Court at the Second Trial expressly relied on evidence obtained through torture to convict Pastor Gong of rape. It also cites Pastor Gong's confession to the Police, which was similarly made under the duress of torture. After only a day and a half of proceedings, the Intermediate Court convicted Pastor Gong of rape and intentional injury. This time it sentenced him to life imprisonment.

12. The source alleges that the Government violated Pastor Gong's right to a fair trial when it relied upon confessions obtained through torture of South China Church members, and by denying fundamental due process guarantees. Both Pastor Gong and the Church members who were co-defendants in his trials raised allegations of torture to the Procuratorate before trial. They also strenuously urged the judges during Pastor Gong's first and second trials to examine their claims of torture. Criminal Procedure Law article 18 requires the Procuratorate to investigate allegations of torture, but the Procuratorate did not undertake any investigations. The Intermediate Court in the first trial also ignored Church members' objections to the introduction of statements obtained through torture. In the second trial, the Intermediate Court similarly ignored objections to the use of evidence obtained through torture. It convicted Pastor Gong based upon the summarized evidence from the first trial, including the coerced confessions of Li Ying, Sun Minghua and Pastor Gong. According to the source, Pastor Gong's conviction and sentence to imprisonment are arbitrary because they are based on evidence obtained through torture.

13. The source asserts that the Government additionally violated Pastor Gong's right to a fair trial by denying him fundamental guarantees of due process, including right to adequate time and facilities to defend charges; right to a public trial; right to be informed of charges; right to cross-examine witnesses; and the right to examine witnesses on the his behalf. The Intermediate Court's decision to hold its proceedings in secret violated Pastor Gong's right to a public trial, thereby rendering his detention arbitrary. The Intermediate Court closed both of Pastor Gong's trials to the public. Close family members of Pastor Gong and Church members were forced to wait outside the courthouse. The Intermediate Court was seeking to justify a secret trial because the charges involved rape. However, it did not even examine the rape charges during the proceedings, call any of the alleged victims to testify, or disclose the full names of the alleged rape victims, even to Pastor Gong. Thus the privacy of the alleged victims was never at risk and was a pretext for violating the important safeguard of justice that a public trial provides. Nor does the record provide any basis for other "exceptional circumstance" (such as national security) that could justify holding a secret trial.

14. With regard to the right to adequate time and facilities to prepare his defence, the source notes that the charges against Pastor Gong were extremely complex. The indictment named more than 20 criminal charges against Pastor Gong and the other 16 Church defendants and listed 13 separate villages in 10 townships and eight cities as locations of the alleged activities. The charges covered activities spanning more than six years. The charges involved 30 alleged victims and 31 alleged witnesses. However, in both trials the Intermediate Court denied Pastor Gong and the other Church members' sufficient time to prepare to defend. Prior to the second trial, Pastor Gong's attorneys explicitly requested an extension of time on the ground that the four days provided were grossly inadequate. However, the Intermediate Court denied their request. In addition, Pastor Gong was denied access to any legal assistance for the four months he was detained incommunicado prior to the December 2001 indictment. Moreover, the Intermediate Court denied Pastor Gong's attorneys access to the record of the first trial and their request for evidence from the first trial, even though the Intermediate Court then relied on evidence from the first trial to convict him at the second trial. The Intermediate Court denied Pastor Gong access to the record and verdict of the first trial. Thus, the Intermediate Court made it impossible for Pastor Gong's attorneys to determine whether the Procuratorate had remedied any of the evidentiary deficiencies in the first trial.

15. The source maintains that the Government violated Pastor Gong's right to be informed of the charges against him. At the second trial the Procuratorate and Court refused to inform Pastor Gong of the identity of the individuals whom he supposedly raped. In addition, the Government did not inform Pastor Gong that he would be tried on the charge of organizing a criminal gang until the Procuratorate raised it during the second trial.

Defence attorneys protested that the charge was not in the indictment. The Intermediate Court overruled their objections, allowed the Procuratorate to proceed, and forced the defence to rebut their charges without allowing them any additional time to prepare. The Intermediate Court concluded the trial without any further elaboration of the new charge. The Government also denied Pastor Gong due process by denying Pastor Gong's attorneys the opportunity to cross-examine any of the Procuratorate's witnesses. Not only the Intermediate Court refused to allow Pastor Gong to cross-examine any of the four alleged rape victims, but the Intermediate Court refused even to disclose their identities. The defendant had no way at all to know... whom he had allegedly raped, nor what her name was. In addition, the Government denied Pastor Gong due process by prohibiting him to call or examine witnesses in his defence.

16. According to the source, the Government has imprisoned Pastor Gong as punishment for his religious beliefs in violation of article 18 of the Universal Declaration of Human Rights and the Constitution of the People's Republic of China, which protects the individual's right to "believe in any religion", and provides that no citizen will be discriminated against by the State because of their religious belief. The Intermediate Court in the first trial relied upon evidence that Church members were "sent to various places to engage in missionary work and to increase its converts" to find Pastor Gong guilty of organizing a cult. Further, the Government has misinterpreted several Christian teachings to signify a political challenge to the Socialist regime. The Cult Notice characterized the Church's collection of voluntary offerings as an illegal practice of "coercing and deceiving". The source asserts that the Government never produced any evidence that Church members were misled as to what their tithes would be used for, that the tithes were used for anything other than legitimate Church activities, or that the Church's accounting practices were fraudulent. However, the Intermediate Court relied on the Cult Notice's characterization of tithing as a cult activity to convict Pastor Gong of organizing a cult.

17. In its response, the Government reported that on 7 December 2001, the People's Procurator's Office of Jingmen city in Hubei province instituted criminal proceedings with the Jingmen Municipal People's Intermediate Court against Gong Dali, also known as Gong Shengliang, male, born May 1952, farmer from Xuzhai village in Zaoyang municipality, Hubei province, and other persons for assault and rape and other offences. Because of the need to protect the privacy of the victims in this case, the Jingmen Municipal People's Intermediate Court, acting in accordance with the law, did not conduct the proceedings in open court and, on 25 December 2001, handed down its judgement at first instance. Following their sentencing at first instance, Gong and the other defendants refused to accept the court's judgement and lodged an appeal. Following its consideration of the case, the Hubei Provincial People's High Court ruled that some of the facts adduced in evidence in the proceedings at first instance had not been clear and, on 23 September 2002, it dismissed the judgement handed down at first instance and sent the case back for retrial.

18. On 9 and 10 October 2002, the Jingmen People's Intermediate Court, in accordance with the law, retried the case in closed court and determined the following facts in the case: over the period from November 1999 to May 2001, Gong and his co-defendants, acting under Gong's leadership, had thrown sulphuric acid into their victims' faces to disfigure them, wearing masks had broken into locked premises, beating their victims ferociously with metal bars, even knocking down walls to enter buildings and to carry out their beatings, as a retaliation against villagers who opposed their unlawful activities, causing intentional harm to 16 persons, 4 of them seriously, 10 with lesser injuries and 2 with slight injuries, with the use of utmost cruelty and in the most reprehensible fashion. In addition, with the use of force, deceit and other ploys, Gong had, in the towns of Zhongxiang, Zaoyang and Shiyan in Hubei province, in other people's homes and on the Huangzhuang sector of the Han river flood control barrier in the town of Zhongxiang, repeatedly carried

out acts of indecent assault and rape against the young women Wang [name withheld], Li [name withheld], Yang [name withheld], Zhang [name withheld] and others.

19. Following the trial, the Jingmen Municipal People's Intermediate Court made public its judgement in the same court, sentencing Gong, in accordance with the provisions of articles 234, paragraphs 1 and 2, and 236, paragraph 3 (b), of the Chinese Criminal Code, for the offence of causing intentional bodily harm, to life imprisonment, stripping him of his political rights in perpetuity; for the offence of rape, to 10-years' fixed-term imprisonment; with the final consolidated sentence of life imprisonment, and deprivation of his political rights in perpetuity. For the offence of causing intentional bodily harm, Gong's co-defendants received fixed-term prison sentences ranging from 2 to 15 years. A further four defendants were discharged. The other counts in the indictments brought by the procuratorial authorities against Gong and the other defendants were dismissed, as the facts in the indictment were not clear, evidence was lacking and there was no determination of the offence.

20. Following the proceedings at first instance, Gong and his co-defendants lodged an appeal. The Hubei Provincial People's High court heard the case at second instance and, on 22 November 2002, ruled that the appeal should be dismissed and the original judgement should stand. Gong is currently serving his sentence in the Hongshan prison in Wuhan city, Hubei province. Prior to his admission to prison, Gong was found to be suffering from stomach ulcers and, according to his own statement, had already undergone more than 20 medical interventions and surgical procedures, the scars from which were visible on his abdomen, and for many years had been on continuous medication. Upon admission to prison, following a course of medication and treatment, his physical condition has returned to normal.

21. Concerning the allegation that Gong and the other defendants, during the pretrial investigation stage, were tortured, and that their confessions and the evidence against them were obtained by coercion and were false and that the courts failed to ensure due process, the Government stated that on no occasion during the proceedings at both first and second instance did either Gong and his co-defendants, or their defence counsel, lodge any complaint regarding the use of torture during the investigation stage. The Jingmen Municipal People's Intermediate Court and the Hubei Provincial People's High Court determined that the actions by Gong and the other defendants had constituted the offence of causing intentional bodily harm; that an appeals procedure had been available to them and, following due authentication during the court proceedings, confirmed that the evidence demonstrated the following:

(a) The statements by the victims and the relevant oral testimony and written testimony provided by the witnesses demonstrated the causes of their injuries and the facts that had been adduced.

(b) The scene-of-the-crime report and photographs were recognized by the defendants concerned who confirmed the place where the offences had been committed.

(c) The forensic investigation report and photographs of the victims demonstrated where the injuries had been sustained on their bodies and the degree of those injuries.

(d) Of these victims, four had sustained injuries categorized as serious; the injuries sustained by the other 12 victims ranged in severity from moderate to slight. After the above-mentioned photographs of the victims were identified by the relevant defendants, it was confirmed that they had inflicted the injuries on the victims.

(e) The report of the material evidence recovered from the scene, the report of the weapons recovered at the scene and the photographs of the places where these weapons

were concealed demonstrated that the implements recovered from the scene of the crime by the investigative officials were the implements used in committing the offence, which had been concealed by the defendants after commission of the offences and which had been recovered after they had been shown by the defendants the places where they had concealed them, recovering iron bars, steel pipes, claw hammers and other implements used in committing the offences, and following admissions by the defendants it was duly confirmed that these were used in the commission of the offences.

22. The Jingmen Municipal People's Intermediate Court and the Hubei Provincial High Court found that Gong was culpable of the offence of rape; that appeals procedures had been available to him; that in the light of its cross-examination of the witnesses in the trial, provided attestation of the following confirmed evidence:

(a) The statements of five victims confirm that Gong had separately in the towns of Zhongxiang, Zaoyang and Shiyan, in other people's homes, and on the Huangzhuang sector of the Han river flood control barrier in the town of Zhongxiang, with the use of force, deceit and other ploys against the victims, obtained illicit sexual relations with them;

(b) In the offices of the public security authorities Gong had admitted the offence of having obtained illicit sexual relations with many young girls confirmed, at the same time, by the statements made in the public security offices by his co-defendant Li Rong and the associated written testimony.

23. The above evidence is clear and ample, and adequately demonstrates that Gong was guilty of the offences of causing intentional bodily harm and rape. This is manifestly not a case of false accusation.

24. Concerning the allegation that the Court's decision to hold both trials in closed session was based on the false pretext of protecting the victims' privacy and was actually designed to breach Gong and his co-defendants' right to a fair trial, the Government reported that, in accordance with the stipulations of article 152 of the Chinese Code of Criminal Procedure, cases involving the privacy of individuals shall not be heard in public. The charges brought by the prosecution against Gong for the offence of rape involved the privacy of certain individuals, and the decision by the People's Court not to hear the case in public was entirely consistent with the law.

25. With respect to the allegation that the Court did not provide the defendant and his lawyers with sufficient time or the wherewithal to conduct a defence, thus breaching his legal right to defence, the Government stated that, in accordance with the stipulations of the relevant articles of the Code of Criminal Procedure, in this case during the trial and sentencing stages, the defendants and their legal counsel all fully exercised their right to defence.

26. With regard to the allegation that, in its ruling against Gong that he organized and used a cult to break the law etc., the Court violated his civil right to freedom of religion and belief, the Government pointed out that the procuratorial authorities brought charges against Gong and the other defendants for other offences; following the trial proceedings it was determined that the facts had not been clear, the evidence was lacking and the offence had not been properly determined.

27. Lastly, the Government expressed the view that the criminal judgement handed down by the People's Court against Gong and the other defendants has already become enforceable and, in accordance with the law, they have already been delivered to their custodial facilities to serve their sentences.

28. The Working Group notes the discrepancies between the allegations from the source and the Government's response. Although the source admits that Pastor Gong Shengliang was condemned for the crimes of assault, rape and intentional bodily harm, it denies that

Pastor Gong was responsible for committing such crimes. According to the source, Pastor Gong recognized committing those crimes solely because he was subjected to torture during his detention before the trial.

29. The Working Group observes that the Government has replied providing specific and concrete information on the trial and the evidences submitted against the above-mentioned person. In its response, the Government clearly denies that Pastor Gong has been subjected to torture or ill-treatment, and adds that, on no occasion during the judicial proceedings at both first and second instance, did either Pastor Gong Shengliang and his co-defendants, or their defence counsels, lodge any complaint regarding the use of torture or ill-treatment during the investigation stage.

30. The source was provided with a copy of the Government's response on 9 October 2007. The Working Group reminded the source on 25 July 2008 of the convenience of submitting its comments or observations to the Government's reply. However, and up to date, the source has not replied.

31. Considering the serious difference between the allegations submitted by the source and the Government's response, the Working Group considers it does not have sufficient elements to issue an Opinion. Therefore, and according to paragraph 17 (d) of the Working Group's methods of work, the Working Group decides to file the case.

Adopted on 10 September 2008